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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
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8 SHANNON M.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL
12 SECURITY,

13 Defendant.

NO. 2:17-CV-0382-TOR

ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY
JUDGMENT

14 BEFORE THE COURT are the parties’ cross motions for summary
15 judgment. ECF Nos. 13; 14. These matters were submitted for consideration
16 without oral argument. The Court has reviewed the administrative record and the
17 parties’ completed briefing, and is fully informed. For the reasons discussed
18 below, Plaintiff’s Motion for Summary Judgment (ECF No. 13) is **DENIED**, and
19 Defendant’s Motion for Summary Judgment (ECF No. 14) is **GRANTED**.

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JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the

1 record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a
2 district court “may not reverse an ALJ’s decision on account of an error that is
3 harmless.” *Id.* An error is harmless “where it is inconsequential to the [ALJ’s]
4 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation
5 omitted). The party appealing the ALJ’s decision generally bears the burden of
6 establishing that he or she was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10
7 (2009).

8 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

9 A claimant must satisfy two conditions to be considered “disabled” within
10 the meaning of the Social Security Act. First, the claimant must be “unable to
11 engage in any substantial gainful activity by reason of any medically determinable
12 physical or mental impairment which can be expected to result in death or which
13 has lasted or can be expected to last for a continuous period of not less than twelve
14 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be
15 “of such severity that he is not only unable to do his previous work[,] but cannot,
16 considering his age, education, and work experience, engage in any other kind of
17 substantial gainful work which exists in the national economy.” 42 U.S.C. §
18 1382c(a)(3)(B).

19 The Commissioner has established a five-step sequential analysis to
20 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.

1 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's work
2 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial
3 gainful activity," the Commissioner must find that the claimant is not disabled. 20
4 C.F.R. § 416.920(b).

5 If the claimant is not engaged in substantial gainful activities, the analysis
6 proceeds to step two. At this step, the Commissioner considers the severity of the
7 claimant's impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
8 "any impairment or combination of impairments which significantly limits [his or
9 her] physical or mental ability to do basic work activities," the analysis proceeds to
10 step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not satisfy
11 this severity threshold, however, the Commissioner must find that the claimant is
12 not disabled. *Id.*

13 At step three, the Commissioner compares the claimant's impairment to
14 several impairments recognized by the Commissioner to be so severe as to
15 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §
16 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
17 enumerated impairments, the Commissioner must find the claimant disabled and
18 award benefits. 20 C.F.R. § 416.920(d).

19 If the severity of the claimant's impairment does meet or exceed the severity
20 of the enumerated impairments, the Commissioner must pause to assess the

1 claimant's "residual functional capacity." Residual functional capacity ("RFC"),
2 defined generally as the claimant's ability to perform physical and mental work
3 activities on a sustained basis despite his or her limitations (20 C.F.R. §
4 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's
6 RFC, the claimant is capable of performing work that he or she has performed in
7 the past ("past relevant work"). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
8 capable of performing past relevant work, the Commissioner must find that the
9 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
10 performing such work, the analysis proceeds to step five.

11 At step five, the Commissioner considers whether, in view of the claimant's
12 RFC, the claimant is capable of performing other work in the national economy.
13 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
14 must also consider vocational factors such as the claimant's age, education, and
15 work experience. *Id.* If the claimant is capable of adjusting to other work, the
16 Commissioner must find that the claimant is not disabled. 20 C.F.R. §
17 416.920(g)(1). If the claimant is not capable of adjusting to other work, the
18 analysis concludes with a finding that the claimant is disabled and is therefore
19 entitled to benefits. *Id.*

20 The claimant bears the burden of proof at steps one through four above.

1 *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009). If the
2 analysis proceeds to step five, the burden shifts to the Commissioner to establish
3 that (1) the claimant is capable of performing other work; and (2) such work
4 “exists in significant numbers in the national economy.” 20 C.F.R.
5 § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

6 **ALJ FINDINGS**

7 Plaintiff filed an application for Supplemental Security Income (“SSI”)
8 benefits on March 14, 2014, alleging a disability onset date of June 1, 2006. Tr.
9 21. The claim was denied initially and upon reconsideration. *Id.* Plaintiff
10 requested a hearing before an ALJ, which was held on January 19, 2016. *Id.* At
11 her hearing, Plaintiff amended the alleged onset date of her disability to March 14,
12 2014. *Id.* On June 24, 2016, the ALJ rendered a decision finding Plaintiff was not
13 disabled. Tr. 35.

14 At step one, the ALJ found that Plaintiff had not engaged in substantial
15 gainful activity since March 14, 2014. Tr. 23. At step two, the ALJ determined
16 that Plaintiff had the following severe impairments: “obesity, major depressive
17 disorder, generalized anxiety disorder, borderline intellectual functioning,
18 personality disorder, and methamphetamine abuse.” *Id.* At step three, the ALJ
19 found that Plaintiff does not have an impairment or combination of impairments
20 that meets or medically equals a listed impairment. Tr. 24.

1 The ALJ then concluded that Plaintiff had the RFC to perform a range of
2 light work based solely on her level III obesity. Tr. 26. The ALJ found that
3 Plaintiff can lift no more than 20 pounds at a time occasionally and can lift or
4 carry 10 pounds at a time frequently. *Id.* Plaintiff can sit, stand, and walk six
5 hours each in an eight-hour workday with normal breaks. *Id.* She can
6 occasionally kneel and climb ramps/stairs, but she cannot crawl, climb
7 ladders/ropes/scaffolds or work around unprotected heights. *Id.* The ALJ
8 determined that mentally, Plaintiff can understand, remember, and carry out
9 simple, repetitive, routine work instructions and work tasks. *Id.* She can have
10 brief, superficial contact with the general public. *Id.* She can work with, or in the
11 vicinity of, coworkers. *Id.* Plaintiff can handle normal supervision but no over-
12 the-shoulder or confrontational type of supervision, and she would do best in a
13 routine work setting with little or no change and no independent decision making.
14 *Id.* The ALJ also found Plaintiff can perform her past relevant work as a motel
15 housekeeper. Tr. 33.

16 At step five, the ALJ determined that Plaintiff is capable of making a
17 successful adjustment to other work that exists in significant numbers in the
18 national economy. Tr. 34. On that basis, the ALJ concluded that Plaintiff was not
19 disabled as defined in the Social Security Act. Tr. 35.

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ISSUES

Plaintiff raises two issues for review:

1. Whether the ALJ erred in assessing Plaintiff's credibility.
2. Whether the ALJ erred in assessing Plaintiff's RFC, posing a proper hypothetical to the vocational expert, and finding Plaintiff to be capable of performing her past relevant work at step four.

ECF No. 13 at 8. The Court evaluates each contention in turn.

DISCUSSION

1. Credibility of Plaintiff

An ALJ engages in a two-step analysis to determine whether a claimant's testimony regarding subjective pain or symptoms is credible. "First, the ALJ must determine whether there is objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation and citation omitted). "The claimant is not required to show that her impairment could reasonably be expected to cause the severity of the symptom she has alleged; she need only show that it could reasonably have caused some degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (quotation and citation omitted). "The only time this standard does not apply is when there is affirmative evidence that

1 the claimant is malingering.” *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d
2 1155, 1160 (9th Cir. 2008).

3 Second, “[i]f the claimant meets the first test and there is no evidence of
4 malingering, the ALJ can only reject the claimant’s testimony about the severity of
5 the symptoms if she gives ‘specific, clear and convincing reasons’ for the
6 rejection.” *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d
7 1028, 1036 (9th Cir. 2007)). “General findings are insufficient; rather, the ALJ
8 must identify what testimony is not credible and what evidence undermines the
9 claimant’s complaints.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014)
10 (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v. Barnhart*,
11 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ must make a credibility
12 determination with findings sufficiently specific to permit the court to conclude
13 that the ALJ did not arbitrarily discredit claimant’s testimony.”).

14 In making such a determination, the ALJ may consider: (1) the claimant’s
15 reputation for truthfulness; (2) inconsistencies in the claimant’s testimony or
16 between her testimony and her conduct; (3) the claimant’s daily living activities;
17 (4) the claimant’s work record; and (5) testimony from physicians or third parties
18 concerning the nature, severity, and effect of the claimant’s condition. *Thomas*,
19 278 F.3d at 958-59.

1 Here, Plaintiff asserts that her credibility is bolstered by the fact that she had
2 consistently reported to her providers that her anxiety caused panic attacks and that
3 she did not feel like leaving home very often. ECF No. 13 at 12; Tr. 85. Plaintiff
4 states her credibility is also supported by her participation in counseling, as well as
5 her continued use of psychotropic medications prescribed by her primary care
6 provider, Dr. Cox. ECF No. 13 at 12. Plaintiff argues that had the ALJ accepted
7 her testimony, he should have found her to be disabled as it is more probable than
8 not that she would be absent from work in excess of one day per month, which the
9 vocational expert (“VE”) indicated would eliminate all work. ECF No. 13 at 12;
10 Tr. 103. Plaintiff concludes that the ALJ’s assessment was not based upon any
11 clear or convincing evidence. ECF No. 13 at 12.

12 The Commissioner counters that Plaintiff neither identifies nor challenges
13 any of the ALJ’s reasons for finding her not credible. ECF No. 14 at 3. The
14 Commissioner argues that Plaintiff’s bare assertion is insufficient to preserve a
15 challenge to the ALJ’s credibility. *Id.* at 4. On the merits, the Commissioner
16 asserts that the ALJ discounted Plaintiff’s credibility for several valid reasons,
17 which will be discussed below. *Id.* at 4-6. The Court still considers the merits of
18 Plaintiff’s argument in spite of her conclusory statements.

19 The ALJ found that “the claimant’s statements concerning the intensity,
20 persistence and limiting effects of these symptoms that the claimant testified to are

1 not consistent with the medical signs and laboratory findings of record to the extent
2 they would limit the ability to perform work related activities” Tr. 27. The
3 ALJ then analyzed the objective medical evidence in the record, inconsistencies in
4 Plaintiff’s testimony and conduct, Plaintiff’s daily activities, and opinions from
5 physicians. Tr. 27-31.

6 In regards to physical symptoms, the ALJ noted that objective findings since
7 the amended alleged onset date have been largely unremarkable and thus
8 inconsistent with her allegations of difficulties with lifting more than 10 pounds,
9 standing for long periods of time, and walking for more than short distances. Tr.
10 27. In April and August 2015, the ALJ emphasized that the physical examinations
11 showed normal range of motion and no tenderness of the neck or back, intact distal
12 pulses with no edema or tenderness of the extremities, and good range of motion.
13 Tr. 28, 646, 654. Plaintiff also had normal motor and sensory function. Tr. 28,
14 646, 654. She presented with back pain in September 2015, but she also reported
15 that prescription pain medications were helpful and that she was not interested in
16 physical therapy. Tr. 28, 634. The ALJ found that her pain was then not so severe
17 as to cause significant deficits in terms of her overall physical functioning. Tr. 28.

18 In February 2016, Plaintiff complained of some pain in her heel and was
19 noted to be walking in an unusual way, but the ALJ noted this appeared to relate to
20 her non-severe Achilles tendinitis rather than any back pain. Tr. 28, 860-62. The

1 ALJ noted that more recent physical examinations from March 2016 show Plaintiff
2 was moving about with all extremities and with no deformities or edema of the
3 lower extremities, with no range of motion deficits appreciated, and with joints
4 with good range of motion. Tr. 28, 880, 886, 901.

5 The ALJ found that Plaintiff's activities indicated that her overall physical
6 functioning was not significantly limited. Tr. 28. At the hearing, Plaintiff testified
7 that she was able to do household chores and use the bus or walk to get around. *Id.*
8 She stated that she was able to leave her house in order to go to the park, a nearby
9 river, and the local casino. *Id.* The ALJ determined that these activities indicated
10 a largely intact ability to stand and walk, and an ability to engage in a variety of
11 postural activities. *Id.* Yet, the ALJ still accounted for Plaintiff's subjective
12 complaints to some extent by finding that a limited range of light work was
13 appropriate. *Id.* The ALJ emphasized that no doctor has indicated that Plaintiff
14 cannot work at the light level. *Id.*

15 In regards to Plaintiff's mental symptoms, the ALJ acknowledged that the
16 record showed a history of mental health treatment dating to 2007, a significant
17 history of psychiatric medications, and psychological testing results consistent with
18 borderline intellectual functioning. Tr. 28, 310-20 (Ex. B1F), 452 (Ex. B9F), 332,
19 337 (Ex. B2F), 361 (Ex. B4F). Yet, the ALJ determined that objective findings
20 related to Plaintiff's mental functioning show that, at all times within a few months

1 and since the amended alleged onset date, she has maintained largely intact social
2 and cognitive functioning. Tr. 28. The ALJ explained that in May 2013, Plaintiff
3 presented as anxious, with depressed mood, and moderately constricted affect, but
4 this was likely due to a situational stressor given that her friend had died suddenly
5 the night before. Tr. 28, 381. The ALJ also noted that Plaintiff's perception
6 appeared within normal limits and she did not appear to be responding to internal
7 stimuli, which was inconsistent with her allegations of hearing voices. Tr. 29, 384.
8 She has acknowledged that since the amended alleged onset date, she does not hear
9 voices anymore and that she last heard voices a few years ago. Tr. 29, 947.

10 In September 2014, the ALJ found that the intake assessment was largely
11 unremarkable and showed overall intact social and cognitive functioning. Tr. 29,
12 992-1003 (Ex. B28F). A mental status examination in March 2015 was again
13 largely unremarkable and showed no significant deficits in her overall mental
14 functioning related to worsening anxiety symptoms. Tr. 29, 935, 960 (Ex. B26F).
15 In May 2015, Plaintiff was noted to present with cuts on both of her forearms, but
16 the results of a contemporaneous mental status evaluation was largely identical to
17 those of the May 2013 psychological examination. The only difference between
18 the examinations were that her abstract thought was not within normal limits, she
19 could remember zero out of three objects after a 5 minute delay, and she had
20 abnormal long-term memory. Tr. 29, 837, 840 (Ex. B22F). Psychiatric

1 assessments in August 2014 and April 2015 were unremarkable, noting Plaintiff as
2 alert, oriented, and with normal speech, affect, mood and judgment. Tr. 29, 623
3 (Ex. B13F), 646, 654 (Ex. B14F).

4 The ALJ also found that the record was inconsistent with Plaintiff's claimed
5 difficulty in leaving the house. Tr. 30. While the record shows several instances
6 in which Plaintiff has missed behavioral health appointments, the record also
7 shows that she was recently able to re-enroll in mental health treatment in March
8 2016 despite her testimony that she presently experiences severe panic attacks. Tr.
9 30, 932-34, 942-43, 953 (Ex. B26F). Although Plaintiff indicated some issues with
10 paranoia, a contemporaneous mental status examination was again largely
11 unremarkable. Tr. 30, 950.

12 Mental status examinations in April 2016 show that although Plaintiff
13 reported feeling anxious and stressed, she still had overall intact mental
14 functioning in that she had appropriate psychomotor behavior, good eye contact,
15 and a cooperative attitude. Tr. 30, 937, 941. Plaintiff was alert with speech and
16 thought process within normal limits. She reported no hallucinations, had full
17 insight and good judgment, and was both oriented and attentive during the
18 interview. Tr. 30, 938.

19 The ALJ found additional inconsistencies between these objective findings
20 and the alleged severity of Plaintiff's mental symptoms. Tr. 30. While Plaintiff

1 testified at the hearing that she did not believe her medications had worked, the
2 record as a whole shows that Plaintiff had regularly indicated that her mental
3 symptoms had improved through use of medication. Tr. 30, 381 (Ex. B7F). In
4 April 2016, Plaintiff reported that in the context of her history of depression and
5 anxiety, she has overall improved and her panic attacks have decreased in
6 frequency through medication. Tr. 30, 933, 938 (Ex. B26F). The ALJ determined
7 that the record also indicated that abnormalities in her mental function had been
8 caused, at least in part, by situational stressors or contemporaneous
9 methamphetamine use. Tr. 30, 885-86, 893-94, 901 (Ex. B25F), 932 (Ex. B26F).

10 Additionally, the ALJ found that Plaintiff's activities were inconsistent with
11 the alleged severity of her mental symptoms, as the activities demonstrated overall
12 intact social and cognitive functioning. Tr. 31. Plaintiff testified that she was
13 staying with her daughter and would go to the park with her grandchildren,
14 showing that she maintained intact relationships with family members. *Id.* The
15 overall record also shows that she maintained friendships with others. Tr. 31, 942,
16 947 (Ex. B26F), 996, 999 (Ex. B28F). At the hearing, Plaintiff reported that she
17 went to the local casino with some friends a few days earlier for her birthday. Tr.
18 31. As to cognitive functioning, she was able to wash dishes, prepare her own
19 meals, and take the bus. *Id.* She also keeps a journal as recommended by her
20

1 behavioral health counselor and she spends time playing with her dog and
2 watching television. Tr. 31, 932, 939 (Ex. B26F).

3 The ALJ determined that the evidence discussed above indicated that
4 Plaintiff had maintained largely intact social and cognitive functioning. Tr. 31.
5 The ALJ still accounted for Plaintiff's subjective complaints to some extent, the
6 nature of her severe mental impairments, and the evidence above by finding an
7 RFC for simple, repetitive, routine work instructions and work tasks. The ALJ
8 also found Plaintiff could have only brief, superficial contact with the general
9 public and limited co-worker and supervisor contact. *Id.* The ALJ determined a
10 work setting with little or no changes and independent decision-making was
11 appropriate. *Id.*

12 This Court finds that the ALJ gave specific, clear, and convincing reasons
13 for rejecting Plaintiff's credibility in regards to her physical and mental symptoms.
14 The ALJ considered the inconsistencies in Plaintiff's testimony and her conduct,
15 including how her daily activities disproved the alleged severity of her symptoms.
16 Tr. 28, 31. The ALJ also extensively considered objective medical evidence,
17 including Plaintiff's physical and mental assessments. While Plaintiff may
18 conclude that the ALJ's assessment was not based upon clear or convincing
19 evidence, this bare assertion does not indicate harmful error when the ALJ
20 extensively considered the medical records, physical and mental examinations, and

1 Plaintiff's testimony and activities. The Court also emphasizes that the ALJ still
2 accounted for some of Plaintiff's alleged severity by only finding a physical and
3 mental RFC for a limited range of light work. Tr. 28, 31. Accordingly, the Court
4 finds that the ALJ properly discredited Plaintiff's testimony with clear and
5 convincing reasons.

6 **2. RFC, Vocational Expert, and Past Relevant Work**

7 **A. Dr. Rozenfeld**

8 Plaintiff argues that her psychological conditions pose limitations affecting
9 her employability, but the ALJ ignored these conditions when he found she was
10 capable of a restricted range of light work. ECF No. 13 at 12. Plaintiff concedes
11 that "[t]he ALJ properly addressed the effects of her psychological impairments in
12 terms of her ability to maintain attendance and work effectively during an eight
13 hour day." *Id.* Yet, Plaintiff contends that the RFC is deficient and does not
14 constitute a complete assessment "which should be allowed to thwart Plaintiff's
15 claim." *Id.* at 12-13.

16 Plaintiff asserts that the hypothetical posed by the ALJ to the VE was
17 incomplete, and thus the ALJ improperly found that Plaintiff could perform her
18 past relevant work as a motel housekeeper at step four. *Id.* at 13. Plaintiff states
19 that the impartial psychologist medical expert Ellen Rozenfeld, Psy.D. rated her as
20 having a moderate degree of limitation in terms of concentration, persistence, and

1 pace. *Id.* at 14. Plaintiff emphasizes that Dr. Rozenfeld opined that she would
2 need a work environment that would include simple, routine, and repetitive tasks
3 which were incorporated into the ALJ's RFC assessment. *Id.* Yet, Plaintiff argues
4 that the RFC assessment did not include any factors addressing Plaintiff's ability to
5 perform activities within a schedule, maintain regular attendance, and be punctual
6 within customary tolerances. *Id.* The assessment also did not include completing a
7 normal work week and work day without interruption from psychologically based
8 symptoms, which Plaintiff argues are critical factors for consideration at steps four
9 and five. *Id.* Plaintiff also insists that these factors should have been included in
10 the hypothetical question posed to the VE. *Id.* Plaintiff states that these limitations
11 are supported by Dr. Rozenfeld's opinions. *Id.* The Commissioner counters that
12 Plaintiff's argument neglects the record because Dr. Rozenfeld did accommodate
13 all of Plaintiff's credible limitations. ECF No. 14 at 9-10.

14 The ALJ considered the opinion evidence of Dr. Rozenfeld who testified
15 that Plaintiff had the mental limitations in the RFC assessment. Tr. 31. The ALJ
16 gave "great weight to the detailed opinion of Dr. Rozenfeld as she had the large
17 majority of the entire longitudinal record evidence to review, whereas the treating
18 sources, examiners, and other reviewers in this case did not." *Id.* The ALJ also
19 noted that Dr. Rozenfeld testified at the hearing and was subject to cross-
20 examination. *Id.* At the hearing, Dr. Rozenfeld testified that she did not have any

1 file evidence that would suggest Plaintiff would have difficulty maintaining regular
2 attendance or being punctual. Tr. 74. She also testified that based on Plaintiff's
3 performance on the mental status exams, Dr. Rozenfeld did not anticipate a
4 problem with handling quotas in a work setting. Tr. 75.

5 The Court emphasizes that Plaintiff admits the ALJ properly considered the
6 effects of her psychological impairments in terms of her ability to maintain
7 attendance and work effectively during a work day. ECF No. 13 at 12. The Court
8 is then not persuaded by Plaintiff's argument that the RFC did not include factors
9 regarding completion of a normal work week or ability to maintain a schedule. *Id.*
10 Plaintiff concedes that Dr. Rozenfeld's opinion was incorporated into the RFC
11 assessment. *Id.* The ALJ gave great weight to Dr. Rozenfeld's testimony, which
12 included her findings that Plaintiff would likely not have difficulty maintaining
13 regular attendance or handling quotas in a work setting. Tr. 74-75. The Court
14 finds that the RFC assessment included the critical factors necessary for the ALJ to
15 determine that Plaintiff is not disabled.

16 Additionally, the Court notes that Plaintiff bears the burden at step four.
17 *Bray*, 554 F.3d at 1222. Plaintiff fails to establish that the ALJ did not properly
18 consider the opinion testimony of Dr. Rozenfeld in establishing the RFC and
19 posing hypothetical questions to the VE. Plaintiff also does not show that she is
20 limited in performing a normal workweek or adhering to a schedule. Dr.

1 Rozenfeld found that Plaintiff was not limited in this respect, and Plaintiff fails to
2 meet her burden that such limitations exist to make the RFC and hypothetical
3 question to the VE deficient. Accordingly, the Court finds that the RFC and
4 hypothetical to the VE were adequate considering Dr. Rozenfeld's opinion.

5 **B. Dr. Arnold**

6 Plaintiff states that the alleged limitations discussed above are also
7 supported by the opinion of evidence of examining psychologist John Arnold,
8 Ph.D. ECF No. 13 at 14; Tr. 837-39 (Ex. B22F). The Commissioner responds that
9 Plaintiff does not challenge any of the ALJ's actual reasoning with regard to the
10 assessment of Dr. Arnold's opinion, and thus her minimal assertions cannot prevail
11 on a challenge to that assessment. ECF No. 14 at 7. The Commissioner still
12 addresses the merits of Plaintiff's argument, stating that the ALJ discounted the
13 marked limitations that Dr. Arnold assessed for multiple valid reasons. *Id.* The
14 Commissioner insists that the ALJ found that Dr. Arnold's marked assessment was
15 contradicted by the contemporaneous mental exams, and objective findings
16 showing largely intact social and cognitive functioning. ECF No. 14 at 8; Tr. 32.
17 The Commissioner asserts that because Dr. Arnold's assessment of marked
18 limitations was contradicted by the objective record, the ALJ reasonably concluded
19 that it was based on Plaintiff's non-credible subjective reports. ECF No. 14 at 8.
20 The Commissioner argues that the ALJ also discounted Dr. Arnold's assessment

1 because his opinion was brief, conclusory, and unsupported by clinical findings.
2 ECF No. 14 at 8; Tr. 32.

3 The ALJ accorded significant weight to Dr. Arnold’s opinion that Plaintiff
4 had no impairment or only mild difficulties in understanding, remembering, and
5 persisting in tasks; moderate difficulties in other work-related activities; and a
6 GAF score consistent with moderate difficulties in functioning. Tr. 32, 383 (Ex.
7 B7F). The ALJ found that these aspects of Dr. Arnold’s opinion were consistent
8 with the results of the mental status examinations. Tr. 32. The ALJ gave little
9 weight to Dr. Arnold’s opinion of marked limitations in such areas as
10 communicating, performing effectively, and maintaining appropriate behavior in a
11 work setting. Tr. 32, 383. The ALJ found that “the results of contemporaneous
12 mental status examinations ..., in addition to findings that the claimant had mostly
13 logical and progressive thought process and content, as well as open/cooperative
14 attitude and behavior, show that Dr. Arnold’s opinions appear to be substantially
15 based on the claimant’s self-reported symptoms and complaints.” Tr. 32. The ALJ
16 also determined that Dr. Arnold’s opinions were mitigated by the fact that he did
17 not have a treating relationship with Plaintiff and his evaluation form was
18 completed by checking boxes with few objective findings in support of the degree
19 of limitations opined. Tr. 32.

1 The Court finds that the ALJ properly rejected the limitations described by
2 Dr. Arnold. The ALJ gave clear and convincing reasons supported by substantial
3 evidence for rejecting some of Dr. Arnold's opinion. *See Bayliss v. Barnhart*, 427
4 F.3d 1211, 1216 (9th Cir. 2005) (citation omitted). The ALJ found that Dr.
5 Arnold's opinion of marked limitations were contradicted by contemporaneous
6 mental status examinations and were a product of Plaintiff's self-reported
7 symptoms. Tr. 32. Dr. Arnold is also not a treating physician and his opinion
8 carries less weight as an examining physician. Tr. 32; *Holohan v. Massanari*, 246
9 F.3d 1195, 1202 (9th Cir. 2001).

10 Accordingly, the Court finds that the ALJ reasonably rejected the limitations
11 described by Dr. Arnold and properly considered the accommodations described
12 by Dr. Rozenfeld. The Court then agrees with the Commissioner that the ALJ was
13 not required to include any additional limitations in the RFC assessment or the
14 hypothetical question to the VE. *See* ECF No. 14 at 10. The Court determines that
15 the ALJ properly found that Plaintiff could perform her past relevant work at step
16 four and other significant number of jobs in the national economy based on the
17 RFC and questions to the VE.

18 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 19 1. Plaintiff's Motion for Summary Judgment (ECF No. 13) is **DENIED**.
20

1 2. Defendant's Motion for Summary Judgment (ECF No. 14) is

2 **GRANTED.**

3 The District Court Executive is directed to enter this Order, enter
4 **JUDGMENT** for Defendant, furnish copies to counsel, and **CLOSE** the file.

5 DATED July 6, 2018.



THOMAS O. RICE
Chief United States District Judge